

CHAPTER 20A
AGRICULTURAL, AQUACULTURAL, AND HORTICULTURAL
WATER USAGE CERTIFICATION RULES

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CHAPTER 20A
AGRICULTURAL, AQUACULTURAL, AND HORTICULTURAL
WATER USAGE CERTIFICATION RULES

SUBCHAPTER 1. GENERAL PROVISIONS

7:20A-1.1 Scope and authority

This chapter shall constitute rules governing water usage certifications for agricultural, aquacultural, and horticultural purposes pursuant to the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq. This chapter establishes the schedule and reporting procedure that persons having the capability to divert 100,000 or more gallons of water per day for agricultural, aquacultural, or horticultural purposes shall follow to establish their privilege to divert water and prescribes the application, review, notification and hearing procedures for establishing privileges to divert water and to obtain water usage certifications and/or registrations.

7:20A-1.2 Construction

(a) This chapter shall be liberally construed to implement the statutory functions pursuant to the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq.

(b) This chapter may be amended, repealed, or rescinded from time to time in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., as amended and supplemented, and the Office of Administrative Law's Rules for Agency Rulemaking, N.J.A.C. 1:30.

(c) Any agricultural, aquacultural, or horticultural uses of water in the State of New Jersey will be presumed to be in the public interest for the purpose of this chapter.

7:20A-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Act" means the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq.

"Adverse impact upon wells" means an impaired pumping rate or a required change in the construction of a well affected by lowered water levels or any impairment of water quality.

"Agricultural, aquacultural, or horticultural purposes" means the commercial activity of producing principally for sale aquatic organisms, crops, plants, animals or their products for the use or consumption by humans including in a primary sense the growing, harvesting, storage and the on-farm preparation for use and marketing of aquatic organisms, crops, plants, animals or their products.

"Agricultural water use registration" or "water use registration" means the document submitted to and processed by the county agricultural agent by persons having the capability to divert more than 100,000 gallons of water per day but using less than said quantity for agricultural, aquacultural, or horticultural purposes.

"Applicant" means any person filing or required to file an application for a water usage certification or water use registration to establish a privilege to divert water pursuant to this chapter or the Act. An applicant may be the owner or operator of property or a person leasing property for agricultural, aquacultural, or horticultural purposes.

"Aquaculture" means the propagation, rearing, and subsequent harvesting of aquatic organisms in controlled or selected environments, and the subsequent processing, packaging and marketing, and shall include, but not be limited to, activities to intervene in the rearing process to increase production such as stocking, feeding, transplanting and providing for protection from predators.

"Aquatic organism" means and includes, but need not be limited to, finfish, mollusks, crustaceans, and aquatic plants which are the property of a person engaged in aquaculture.

"Aquifer" means any subsurface water-saturated zone which is significantly permeable so that it may yield sufficient quantities of water from wells or springs in order to serve as a practical source of water supply.

"Area of critical water supply concern" or "critical area" means a region of the State, as designated by the Commissioner under N.J.A.C. 7:19-8, where excessive water usage or diversion presents undue stress, or wherein conditions pose a significant threat to the long-term integrity of a water supply source, including a diminution of surface water due to excess groundwater diversion.

"Capability to divert 100,000 gallons of water per day" means having the equipment or diversion structure with the hydraulic capacity to pump or divert 100,000 gallons per day of ground and/or surface water; for pumping equipment, the hydraulic capacity is equivalent to 70 gallons per minute.

"Commissioner" means the Commissioner of the Department of Environmental Protection or his or her designated representative.

"Cone of depression" means an area where the groundwater has been drawn down to the point where the aquifer to be utilized is overstressed, threatened by saline intrusion or is in critical water supply area.

"County agricultural agent" or "appropriate county agricultural agent" or "agent" means the faculty member of the Department of Agriculture and Resource Management Agents at Cook College, Rutgers the State University, so assigned or designated for each county by the Director of the Rutgers Cooperative Extension and/or the Dean of Cook College.

"County agricultural development board" means the public body established by the governing body of a county under the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq.

"Decision maker" means the person designated by the Department to make recommendations to the appropriate county agricultural agent on applications for water usage certifications and claims of privileges to divert water.

"Department" means the New Jersey Department of Environmental Protection.

"Diversion source" means the structure by which water is diverted.

"Divert" or "diversion" means the taking of water from a river, stream, lake, pond, aquifer, well, other underground source, or other water body, whether or not the water is returned thereto, consumed, made to flow into another stream or basin, or discharged elsewhere.

"Drought" means a condition of dryness due to lower than normal precipitation, resulting in reduced stream flows, reduced soil moisture and/or a lowering of the potentiometric surface in wells.

"Lawful entry" means an entry by the Commissioner, or his or her designated representative, into any building, place, or premise pursuant to N.J.S.A. 13:1D-1 et seq. and otherwise provided by law, ordinance, regulation, order, permit, certification, or agreement.

"Modification" means a change to a certification including, but not limited to, an increase in certification amount, the addition of a new diversion source, or an increase in pump capacity of an existing diversion source.

"Person" means any individual, corporation, company, partnership, firm, association, owner or operator of an enterprise engaged in agricultural, aquacultural, or horticultural purposes.

"Potentiometric surface" means an imaginary surface which represents the static head of water, relative to sea level, in a well constructed in an aquifer.

"Replacement well" means a new well that is to replace an existing well which will be sealed in accordance with N.J.A.C. 7:9-9 and where the proposed well will be approximately the same depth as the existing well and diverting from the same aquifer; have the same or lesser pumping capacity; and be within 100 feet of the existing well.

"Safe or dependable yield" or "safe yield" or "dependable yield" means that maintainable yield of water from a surface or ground water source or sources which is available continuously during projected future conditions, including a repetition of the most severe drought of record, without creating undesirable effects, as determined by the Department.

"Violator" means any person whom the Department asserts has violated the Act or any rules issued pursuant to the Act.

"Water" or "waters of the State" means all surface water or ground water in the State.

"Water resource" means any river, stream, lake, pond, aquifer, other underground source, or other water body.

"Water supply allocation permit" means the document issued by the Department to a person granting that person the privilege, so long as the person complies with the conditions of the document, to divert 100,000 or more gallons of water per day for more than 30 days in a consecutive 365 day period, for any purpose other than agricultural, aquacultural, or horticultural purposes.

"Water supply critical aquifer" means an aquifer within an area of critical water supply concern in which there may be either insufficient water supply, shortage of ground water due to overdraft, threat of salt water intrusion or contamination.

"Water usage certification" or "Certification" means the document issued by a county agricultural agent or the Department pursuant to this chapter to a person granting that person the privilege to divert 100,000 gallons or more of water per day from ground and surface water sources for agricultural, aquacultural, or horticultural purposes for a five-year period.

"Well" means a hole or excavation deeper than it is wide, that is drilled, bored, core driven, jetted, dug or otherwise constructed for the purpose of the removal of, investigation of, or exploration for water.

"Well sealing" means the permanent closure of a well in accordance with the procedures set forth at N.J.A.C. 7:9-9.

"Zone of influence" means the area of ground water which experiences an impact attributable to a pumping well.

7:20A-1.4 Applicability

(a) This chapter applies to all persons who have been issued a water usage certification, and to other persons who are diverting, have the ability to divert to divert 100,000 or more gallons of water per day for agricultural, aquacultural, or horticultural purposes, and to all persons who in the future wish to divert 100,000 or more gallons of water per day for agricultural, aquacultural, or horticultural purposes except as specified below:

1. This chapter does not apply to persons who divert salt water except where the Department determines that salt water diversion and usage may affect utilization of fresh water.

2. Water usage certifications shall not be required for a person diverting water from a purveyor or for transfers from a water purveyor within the scope of an existing water usage certification or water supply allocation permit. Modification of a certification shall be required for diversions or transfers of water from certified or permitted usage to another use not within the scope of an existing water usage certification regardless of the same or different ownership of the property.

3. An applicant with a total demand of 100,000 or more gallons of water per day may be issued a water diversion allocation from ground and surface water sources by a single water usage certification in cases where:

i. The agricultural, aquacultural, or horticultural site or group of properties under common ownership or management are contiguous to each other;

ii. The non-contiguous agricultural, aquacultural, or horticultural site or group of properties under common ownership or management are all located within the same municipality; or

iii. The non-contiguous agricultural, aquacultural, or horticultural site or group of properties under common ownership or management lie within an area of a square two miles on a side.

4. An application for a major modification of a water usage certification, as provided for under in N.J.A.C. 7:20A-2.2(a), is not required for the installation of a replacement well for an existing well included in an existing water usage certification.

i. Prior to the installation of the replacement well, the holder of the existing water usage certification shall provide the following information to the appropriate county agricultural agent for the replacement well and the existing well:

- (1) Location;
- (2) Pump capacity and depth; and
- (3) Well permit number and local name or number.

ii. The holder of the water usage certification shall provide the State of New Jersey assigned well permit number for the existing well that is to be sealed to the person sealing the well. The existing well shall be sealed in accordance with N.J.A.C. 7:9-9.

iii. The county agricultural agent shall submit to the Department the information required under (a)4i above within 60 days after the installation of the replacement well.

(b) An applicant shall be considered to have diverted 100,000 or more gallons of water per day for agricultural, aquacultural, or horticultural purposes if the applicant proposes to divert 100,000 or more gallons of water per day, or existing documentation establishes that the applicant's proposed or actual total gallons of water diverted for agricultural, aquacultural, or horticultural purposes during the maximum month for usage in the calendar year most recent to the time of application, when divided by the total number of days in the measuring month, produces a figure of 100,000 or more gallons of water per day.

(c) An applicant whose diversion source is located within an area of critical water supply concern is subject to this chapter and, in addition, to the water allocation management requirements for areas of critical water supply concern set forth in the Water Supply Allocation Permit Rules at N.J.A.C. 7:19-8.

7:20A-1.5 Uncertified diversions

(a) No person shall divert water either from a single diversion source or from combined diversion sources at a rate in excess of 100,000 gallons of water per day without either obtaining a water usage certification or water use registration in accordance with this chapter, or obtaining a Water Supply Allocation Permit or a Temporary Dewatering Permit, a Water Use Registration, or complying with the requirements for a Short Term Water Use Permit-by-Rule or Dewatering Permit-by-Rule in accordance with N.J.A.C. 7:19.

(b) Any person who intends to divert 100,000 or more gallons of water per day for agricultural, aquacultural, or horticultural purposes shall apply for a water usage certification by following the application procedures set forth in N.J.A.C. 7:20A-2.

(c) Any person who intends to divert less than 100,000 gallons of water per day for agricultural, aquacultural, or horticultural purposes, but who has the capability to divert 100,000 gallons of water per day or more, shall register the diversion source in accordance with the procedures set

forth in N.J.A.C. 7:20A-3.

(d) Any certification holder who, because of a water supply shortage and/or water quality emergency, seeks to divert water from a diversion source for which he or she does not have diversion privileges under a certification issued pursuant to this chapter, shall obtain from the appropriate county agricultural agent written verification of the water supply shortage and/or water quality emergency, and shall submit the verification with a written request for authorization for the uncertified diversion to the Department at: Bureau Chief, Bureau of Water Allocation, P.O. Box 426, Trenton, New Jersey 08625-0426. The certification holder shall be eligible for authorization for the uncertified diversion only if the following requirements are met:

1. The certification holder applies for a modification of its certification under N.J.A.C. 7:20A-2.2 within 30 calendar days of the initiation of the uncertified diversion authorized under this subsection;

2. The certification holder uses the uncertified diversion authorized under this subsection only on a last on, first off basis until the certification modification required under (d)1 above is approved; and

3. The uncertified diversion is not from a water supply critical aquifer.

7:20A-1.6 Procedure for transfer of a water usage certification

(a) An existing water usage certification for any property utilized for agricultural, aquacultural, or horticultural purposes that has been transferred in ownership or operation without any change or modification in the specified conditions of water usage for agricultural, aquacultural, or horticultural purposes, may be transferred to the new owner or operator of the property upon notification by the new owner or operator of the appropriate county agricultural agent except that:

1. If any change in the specified conditions of water usage or property utilization for agricultural, aquacultural, or horticultural purposes occurs prior to or subsequent to the transfer of ownership or operation, then the new owner or operator shall follow the application process for new water usage certifications outlined in N.J.A.C. 7:20A-2.

2. If the new owner or operator of the property does not notify the appropriate county agricultural agent of the transfer of the existing water usage certification within 180 days after the transfer of ownership or operation, then the privilege of the new owner or operator to divert water under the existing water usage certification shall cease and the new owner or operator shall follow the application process for new water usage certifications outlined in N.J.A.C. 7:20A-2 to establish the privilege to divert water.

(b) A certification holder who enters into an agreement for the transfer of ownership or operation of property used for agricultural, aquacultural, or horticultural purposes for which a water usage certification has been issued under this chapter shall notify the new owner or operator that the new owner or operator must notify the appropriate county agricultural agent of the transfer. The certification holder shall submit to the appropriate county agent a copy of this notification.

7:20A-1.7 Complaints of interference

(a) The appropriate county agricultural agent shall refer to the Department all complaints received from persons alleging that their diversion source is being adversely impacted by an existing diversion source which is included within a water usage certification.

(b) All complaints shall be made in writing and shall include:

1. The location of the involved wells or intakes;
2. The nature and frequency of interference; and
3. The well drilling permit number, well depth and capacity for each of the complainant's wells.

(c) The Department shall determine the validity of all such complaints. If the complaint is valid the Department shall investigate and make a determination as to cause based upon the facts in each particular case. The Department shall notify the complainant, the certification holder, and the appropriate county agricultural agent of its findings and shall, if necessary, direct that a solution be implemented within 30 days.

7:20A-1.8 Program information

Unless otherwise specified, any questions concerning the requirements of this chapter shall be directed to the appropriate county agricultural agent, or to the Bureau of Water Allocation, Water Supply Element, New Jersey Department of Environmental Protection, P.O. Box 426, Trenton, New Jersey 08625-0426.

7:20A-1.9 Severability

If any section, subsection, provision, clause, or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

SUBCHAPTER 2. WATER USAGE CERTIFICATION PROCEDURE

7:20A-2.1 Scope

This subchapter prescribes the procedures which shall be followed by applicants when applying for, and by the county agricultural agents and the Department in the processing of, applications for water usage certifications.

7:20A-2.2 Major and minor certification modifications

(a) A major modification of a water usage certification shall be obtained pursuant to N.J.A.C. 7:20A-2.3 for the following:

1. The relocation of an intake or well to a site more than 100 feet from the site of the intake or well specified in the certification;
2. The addition of a diversion source, unless the new diversion source meets the criteria identified in (b)4 below or is a replacement well as defined under N.J.A.C. 7:20A-1.3, whether or not an increase in allocation is sought;

3. An increase in pumping capacity, or monthly or annual allocation; and/or

4. A change to any condition of the certification that has the potential to cause an adverse impact either upon a water resource or upon other users of that water resource.

(b) A minor modification of a water usage certification may be effected pursuant to the following:

1. A change in name or mailing address of the certification holder by a written notice of the change to the county agent and the Department within 30 days of the change;

2. A transfer of ownership or operation of the agricultural, aquacultural, or horticultural property in accordance with N.J.A.C. 7:20A-1.6;

3. The installation of a replacement well in accordance with N.J.A.C. 7:20A-1.4(a)4;

4. The addition of a well in the same aquifer at the approximate same depth, with the same or lower pumping capacity as a well specified in the certification, provided the additional well is within 100 feet of the existing well, is being added solely to reduce the irrigation time, and does not require any increase in allocation. The additional well shall not be any closer than 500 feet to any property line. The certification holder shall provide the appropriate county agricultural agent with a copy of the well record form as required under N.J.S.A. 58:4A-14(c) for the additional well and a sketch showing the location of the additional well relative to the existing well with the distance between the two wells delineated; and/or

5. A reduction in allocation in accordance with N.J.A.C. 7:20A-2.4(h).

7:20A-2.3 General application procedures

(a) The Department will provide the current application forms required for water usage certifications to all county agricultural agents.

(b) An applicant for a water usage certification to renew, or establish a privilege to divert 100,000 or more gallons of water per day for agricultural, aquacultural or horticultural purposes, or for a major modification of the certification shall contact the appropriate county agricultural agent to obtain application forms, a photocopy of the appropriate portion of a United States Geological Survey Quadrangle Map or county road map, and other instructions needed to file a complete application.

(c) The applicant shall follow all the instructions to complete the application forms, and shall obtain and prepare all other documents, including the photocopy of the appropriate portion of the United States Geological Survey Quadrangle Map or county road map, required by the instructions.

(d) All applications shall be signed by the applicant if an individual, or a duly authorized representative of the applicant if the applicant is an entity other than an individual. If the applicant is not an individual, a certified copy of the document authorizing the representative to sign for the applicant shall be attached to the application.

(e) The applicant shall complete the application forms and other required documents in accordance with N.J.A.C. 7:20A-2.4 or 2.5 as appropriate, and submit the completed application forms and other required documents to the appropriate county agricultural agent.

7:20A-2.4 Application requirements and procedures for the renewal with no modification or the renewal with minor modification of an existing water usage certification; extension of certain existing certifications

(a) An application for renewal of an existing water usage certification shall be submitted to the appropriate county agricultural agent at least three months prior to the expiration date in accordance with the procedures set forth in N.J.A.C. 7:20A-2.3. Renewals with no or minor modifications, as identified in N.J.A.C. 7:20A-2.2(b), shall be processed in accordance with this section. Renewals with major modifications shall be processed in accordance with N.J.A.C. 7:20A-2.5.

(b) The applicant for renewal shall submit a completed application form including the following information:

1. The name, address, and telephone number of the certification holder, and the name, address, and telephone number of the owner or operator.
2. The total number of acres owned or operated for agricultural, aquacultural, or horticultural purposes, the number of acres actively being farmed, the U.S. Department of Agriculture soil mapping unit, the acreage planted in each crop, and the number of acres of each crop under irrigation;
3. A description of the location of each diversion source, and the name and pumping capacity for each diversion source, including, if the diversion source is a well, the State of New Jersey assigned well permit number;
4. A description of the irrigation or water use practices and irrigation equipment used;
5. A description of the method used to measure the amounts of water diverted from each diversion source; and
6. For the last month of operation prior to application, a copy of the daily and/or the monthly hours of operation of each diversion source, and/or the quantity of water diverted monthly from each diversion source as taken from the log or other appropriate record, as required pursuant to N.J.A.C. 7:20A-2.6(a)4.

(c) The appropriate county agricultural agent shall notify the applicant if the application submitted under (b) above is incomplete, and shall request that the applicant submit any necessary information within 30 days of the date of the notification.

(d) On receipt of a complete application, the appropriate county agent shall calculate and recommend a water allocation adequate to meet the applicant's water usage requirements based upon the information submitted under (b) above and the agent's knowledge of agriculture, aquaculture, and horticulture.

(e) If the applicant requests renewal of the certification with no modification or renewal with minor modification, as identified at N.J.A.C. 7:20A-2.2(b), the appropriate county agricultural agent shall submit to the

Department the application, the county agent's recommendation for an adequate water allocation calculated under (d) above, and recommended additional conditions, if any.

(f) The Department shall review the application, the county agent's recommended water allocation and conditions, and the applicant's historical water usage as reported in accordance with N.J.A.C. 7:20A-2.6(a)5 in consultation with the county agent, and shall determine if the allocation is reasonably required for future use.

(g) If the Department determines under (f) above that the allocation is reasonably required for the applicant's future use, the Chief of the Bureau of Water Allocation within the Department, or his or her designee, shall issue to the certification holder a letter of approval and a certification for a renewal term of 5 years, with the appropriate allocation and conditions as outlined at N.J.A.C. 7:20A-2.6(a).

(h) If the Department determines under (f) above that the allocation is not reasonably required for future use and the certification holder's allocation should be reduced on renewal, the Department shall:

1. Prepare a written analysis of the proposed reduction in allocation which shall be available for review on request;

2. Notify the applicant, and the appropriate county agent of the proposed reduction in allocation, including the written analysis; and

3. Publish in a newspaper of general circulation in the area of the certification holder's diversion source a notice of the proposed reduction in allocation, providing an opportunity for submission to the Department, within 30 days of publication of the notice, of written comments and/or requests for a public hearing on the proposed reduction.

(i) If the Department does not receive any request for a hearing on the proposed reduction in allocation within the public comment period established under (h)3 above, the Chief of the Bureau of Water Allocation within the Department, or his or her designee, shall issue to the certification holder a letter of approval and a certification for a renewal term of 5 years, with the appropriate allocation and conditions as outlined at N.J.A.C. 7:20A-2.6(a), and shall include a summary of responses to all written comments timely received.

(j) If the Department does receive a request for a public hearing on the proposed reduction in allocation within the comment period established under (h)3 above, the Department shall hold a public hearing and subsequently issue to the certification holder a certification for a renewal term of 5 years in accordance with the following:

1. The Department shall schedule the public hearing within 30 days of the close of the comment period established under (h)3 above;

2. At least 15 days before the scheduled date of the public hearing, the Department shall notify the applicant, the appropriate county agricultural agent, and each person who submitted a request for a public hearing, and shall also publish a notice of the public hearing in a newspaper of general circulation in the area of the certification holder's diversion sources; and

3. Within 60 days after the public hearing, the Chief of the Bureau of Water Allocation within the Department, or his or her designee, shall issue to the certification holder a letter of approval and a certification for a renewal term of 5 years, with the appropriate allocation and conditions as outlined at N.J.A.C. 7:20A-2.6(a), and shall include a summary of responses to all comments received within the public comment period established under (h)3 above and at the public hearing.

(k) Any certification with an approved diversion amount of more than 15.5 million gallons per month, and with an expiration date in 2001 or 2002 is extended for a period of two years to 2003 or 2004, respectively.

7:20A-2.5 Application requirements and procedures for a new water usage certification, renewal of a certification with major modification, or major modification of a certification

(a) The applicant for a new water usage certification, renewal of a certification with major modification, or major modification of a certification shall submit a completed application form including the following information:

1. The name, address, and telephone number of the certification holder, and the name, address, and telephone number of the owner or operator;

2. The total number of acres owned or operated for agricultural, aquacultural, or horticultural purposes, the number of acres actively being farmed, the U. S. Department of Agriculture soil mapping unit, the acreage planted in each crop, and the number of acres of each crop that is under irrigation;

3. A description of the location of each diversion source, and the name and pumping capacity for each diversion source, including, if the diversion source is a well, the State of New Jersey assigned well permit number;

4. A description of the irrigation or water use practices and irrigation equipment used;

5. A description of the method used to measure the amounts of water diverted from each diversion source;

6. For a renewal with major modification and for a major modification, a copy of the daily and/or monthly hours of operation of each diversion source and/or the quantity of water diverted monthly from each diversion source for the last month of operation prior to application, as taken from the log or other appropriate record required pursuant to N.J.A.C. 7:20A-2.6(a)4; and

7. Sufficient information to demonstrate that under standard operating conditions:

i. The diversion of the quantity of water requested shall not unduly interfere with other existing diversions;

ii. The diversion shall not exceed the natural replenishment or safe yield of a water resource or threaten to exhaust the water resource or to render it unfit for use;

iii. In the case of a groundwater diversion, the diversion shall not cause an increase in saline intrusion that renders the water resource unfit

for use; shall not spread groundwater contamination; and shall not interfere with any groundwater remediation plan or activity; and

iv. The diversion shall not reduce the dry season flow or level of a river, stream, lake, or pond so as to adversely affect sanitary conditions downstream or otherwise unduly injure public or private interests, including the maintenance of fish life.

(b) The applicant for a new water usage certification or for a major modification of a certification or a renewal with major modification of a certification shall submit the copy of the portion of the United States Geological Survey Quadrangle map or county road map provided to the applicant under N.J.A.C. 7:20A-2.3 with the locations of all the applicant's existing and/or proposed diversion sources identified.

(c) The appropriate county agricultural agent shall notify the applicant if the application submitted under (a) and (b) above is incomplete, and shall request that the applicant submit any necessary information within 30 days of the date of notification.

(d) On receipt of a complete application, the appropriate county agent shall calculate and recommend a water allocation adequate to meet the applicant's water usage requirements based upon the information submitted under (a) and (b) above and the agent's knowledge of agriculture, aquaculture, and horticulture.

(e) The county agent shall submit to the Department the application, the recommendation of an adequate water allocation calculated under (d) above, and recommended additional conditions, if any.

(f) The Department shall review the application and any other relevant information to determine if the requirements of (a)7 above are met. The Department shall, in consultation with the county agent, request any additional information necessary for this determination.

(g) On completion of its review under (f) above, the Department shall:

1. Notify the county agent and the applicant; and
2. Notify, in writing, the governing bodies of all municipalities and counties and water supply allocation permit holders and water usage certification holders within a one-mile radius of the proposed diversion.

(h) On receipt of notice under (g)1 above, the applicant, in consultation with the county agent, shall publish within 30 days a notice of application in a newspaper of general circulation in the area of the applicant's diversion source. The applicant shall pay the cost of publishing the notice. The notice shall:

(1) Describe the diversion for which the application has been submitted, including the name and location of the diversion source, and the quantity and allocation of water to be diverted;

(2) State that the application is available for review at the office of the county agricultural agent and at the Department; and

(3) Provide an opportunity for submission to the Department, within 30 days after the date on which the newspaper notice is published, of written

comments and/or requests for a public hearing on the application.

(i) After the close of the comment period established under (h) above, the Department shall review any written comments received, and all other relevant data including the county agent's recommendation of water allocation.

(j) If the Department does not receive a request for a public hearing on an application within the public comment period established under (h) above, the application shall be processed as follows:

1. For each application, the Department, in conjunction with the appropriate county agricultural agent, shall prepare a written analysis supporting either approval or denial of the application and incorporating a summary of responses to all comments timely received;

2. If the written analysis under (j)1 above supports approval of an application, the applicant shall be notified and issued a certification as follows:

- i. For the approval of a new water usage certification, the appropriate county agricultural agent shall issue the certification with the appropriate allocation and conditions as outlined at N.J.A.C. 7:20A-2.6(a);

- ii. For the approval of an application for a major modification of a water usage certification or for renewal of a water usage certification with major modification, the Department shall issue the certification with the appropriate allocation and conditions as outlined at N.J.A.C. 7:20A-2.6(a); and

3. If the written analysis under (j)1 above supports denial of an application, the applicant shall be notified as follows:

- i. For the denial of a new water usage certification, the appropriate county agricultural agent shall issue a letter of denial, which shall state the reasons for denial; and

- ii. For the denial of a major modification of a water usage certification or renewal of a water usage certification with major modification, the Department shall issue a letter of denial, which shall state the reasons for denial.

(k) If the Department does receive a request for a public hearing on an application within the public comment period established under (h) above the application shall be processed as follows:

1. The Department shall notify the applicant, the appropriate county agricultural agent, and the Department of Agriculture of the request and shall convene an informal advisory panel, consisting of a representative of the Bureau of Water Allocation, the designated representative of the Secretary of Agriculture, and a representative of the Dean of Cook College.

2. The advisory panel shall schedule an informal meeting among the applicant, the advisory panel, any person(s) who have requested a public hearing on the application, and the County Agricultural Development Board (if one has been established in the county where the diversion source is located) to discuss the application;

3. If the meeting results in an agreement regarding the application that obviates the need for a public hearing on the application, the advisory panel shall prepare a report outlining the agreement and, based upon the report, a certification shall be issued in accordance with (j)2 above;

4. If the meeting does not result in an agreement regarding the application, the Department shall schedule a public hearing on the application and designate a hearing officer. The Department shall notify the applicant, the advisory panel, all persons who submitted written comments during the comment period established under (h) above, and all other persons who participated in the informal meeting with the advisory panel and shall, in addition, publish notice of the public hearing on the application in a newspaper of general circulation in the area of the applicant's diversion source at least 30 days before the date of the scheduled public hearing. The notice shall contain a description of the application, the date, time and place of the public hearing, and a statement that written comments on the application may be submitted until 20 days after the scheduled public hearing date;

5. For each application the Department shall prepare a written analysis of its findings regarding the application and shall present the analysis at the public hearing on the application if one is held under (k)4 above. In addition, the Department shall, at least five days before the date of the public hearing, provide the analysis to any person who submits a written request for it;

6. The hearing officer shall prepare a hearing officer's report, based upon comments received;

7. The Administrator of the Water Supply Element, as decision maker on the application, shall review the hearing officer's report, the application, the water allocation recommended by the appropriate county agent, the Department's written analysis of its findings, any written comments received, the transcripts from the public hearing, the Department's responses to the comments, and any other information relevant to the application, and shall approve or deny the application as follows:

i. If the application is denied, the applicant shall be so notified in a letter of denial, which shall state the reasons for denial. The letter of denial shall be issued in accordance with (j)3 above, and a copy of the letter of denial shall be sent to each person who submitted written comments or who attended the public hearing regarding the application;

ii. If the application is approved, the applicant shall be so notified in a letter of approval, which shall state the reasons for approval. The water usage certification, with the appropriate allocation and conditions as outlined at N.J.A.C. 7:20A-2.6(a), shall be issued in accordance with (j)2 above. A copy of the letter of approval, the hearing officer's report and the decision maker's statement shall be sent to each person who submitted written comments or who attended the public hearing regarding the application; and

8. The Department shall certify the costs of the public hearing on the application, including the costs for advertisement and of the stenographic record but excluding expenses for the Department's hearing officer, and shall bill such costs to the applicant. The Department or county agent, as applicable, shall not issue either a denial letter or an approval letter and water usage certification under (k)7 above unless the applicant pays the costs in full no later than 30 days after the date of the bill.

N.J.A.C. 7:20A-2.6 Water Usage Certification Conditions

(a) The appropriate county agricultural agent and the Department shall include as standard conditions in all water usage certifications the following conditions:

1. The term of the certification, which shall be 5 years;
2. A list of the approved diversion sources and the approved diversion rate for each;
3. The maximum allowable diversion for the certification, expressed in terms of a monthly and annual allocation;
4. That the certification holder shall maintain a log or other appropriate record in which the daily and/or monthly hours of operation of each diversion source and/or the quantity of water diverted monthly from each diversion source is recorded in ink;
5. That by February 28 of each year the certification holder shall submit to the appropriate county agricultural agent a report for the preceding calendar year of monthly water usage for each diversion source, as recorded in the log or other appropriate record required under (a)4 above, and the crop types planted and the acres of each crop type that were under irrigation;
6. That the certification holder may transfer the certification provided, in accordance with N.J.A.C. 7:20A-1.6, notification is made to the appropriate county agricultural agent and provided no changes or modifications are made in the specified conditions of the water usage certification;
7. That the Department may revoke the certification, after notice and after an adjudicatory hearing, if requested, for violations of the certification conditions or of the rules adopted or orders issued by the Department, and when deemed necessary for the public interest;
8. That the water diverted shall be used for the approved purposes;
9. That if the authorized diversion privileges are not currently utilized, or reasonably required for a demonstrated future need, they shall revert back to the State upon renewal or modification of the certification;
10. That an increase in allocation, the relocation of a diversion source more than 100 feet from an existing diversion source, the addition of a new diversion source, or an increase in pumping capacity requires prior approval through a major modification of the certification; and
11. That a certification that includes a diversion source located within a water supply critical aquifer is subject to the water allocation management requirements for areas of critical water supply concern in the Department's Water Supply Allocation Permit Rules at N.J.A.C. 7:19-8.

(b). The appropriate county agricultural agent or the Department may include in a water usage certification a condition or conditions in addition to the standard conditions listed at (a) above as necessary to insure the proper implementation of the Act and this chapter.

7:20A-2.7 Record of decision

(a) There shall be maintained by the Department and the appropriate county agent for each application reviewed a record consisting of copies of:

1. The application documents;
2. Water allocation recommendation by appropriate county agricultural agent;
3. Written analysis supporting approval or denial of the application;
4. Advisory Panel recommendations;
5. The public hearing report and transcript;
6. Comments received, and a summary of the Department's responses;
7. The letter of approval and water usage certification or letter of denial; and
8. All other relevant information.

(b) This record may be reviewed at the Department and the office of the appropriate county agricultural agent and copies of it may be obtained upon payment of the fee for duplication.

7:20A-2.8 Appeal procedure

(a) An applicant who believes himself or herself to be aggrieved by a decision made by the Department regarding any water usage certification may contest the decision and request a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1, if the Department:

1. Approves or denies an application for a water usage certification, or any part thereof; or
2. Revokes, withdraws or modifies a previously issued approval.

(b) Requests for a contested case hearing shall be submitted to:

Office of Legal Affairs
Attn.: Adjudicatory Hearing Requests
Department of Environmental Protection
P.O. Box 402
401 East State Street
Trenton, New Jersey 08625-0402

(c) All requests for a contested case hearing shall be submitted to the Department within 20 calendar days after the date upon which the applicant received the notice of the Department's decision.

(d) All requests for a contested case hearing shall be submitted in writing to the Department and shall contain:

1. The name, address and telephone number of the person making the request;

2. A statement of the legal authority and jurisdiction under which the request for a hearing is made;

3. A brief and clear statement of specific facts describing the Department decision being appealed, as well as the nature and scope of the interest of the requester in the decision;

4. A statement of all facts alleged to be at issue and their relevance to the Department decision for which a hearing is requested, as well as any legal issues associated with the alleged facts at issue;

5. An estimate of the time frame required for the hearing(in days and/or hours);

6. A request, if necessary, for a barrier free hearing location for physically disabled persons; and

7. An indication if whether the applicant is willing to negotiate a settlement with the Department prior to the Department sending the hearing request to the Office of Administrative Law.

(e) A hearing request based upon an issue not raised during the public comment period on a certification application shall be denied by the Department.

(f) A hearing request not submitted within 20 days after the applicant received notice of the Department's decision shall be denied by the Department.

(g) If the applicant fails to include all the information required under (d) above, the Department may deny the hearing request.

(h) The Department will determine whether any request for a contested case hearing shall be granted. In making such determination, the Department will evaluate the request to determine whether a contested case exists and whether there are issues of fact which, if assumed to be true, might change the Department's decision. Where only issues of law are raised in a request for a hearing, the request will be denied. Denial by the Department of a request for a contested case hearing shall constitute the final decision of the Department for the purposes of judicial appeal.

(i) The hearing, if granted shall be held before an administrative law judge and in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the rules and regulations promulgated thereunder.

7:20A-2.9 Certifications including construction, repair or reconstruction of dams and other related structures

(a) A water usage certification issued by an appropriate county agricultural agent may include the right to construct, repair or reconstruct dams or other related structures provided that any proposed work to construct, repair or reconstruct dams or other related structures shall comply with N.J.S.A. 58:4-1 et seq. and all other applicable laws and regulations.

(b) In the case of a water usage certification issued pursuant to (a) above, a stream encroachment permit for irrigation headgates and tidegates along the banks of a stream shall not be required by the Department.

SUBCHAPTER 3. WATER USE REGISTRATION PROCEDURE

7:20A-3.1 Scope

This subchapter prescribes the procedures which shall be followed by applicants when applying for, and by county agricultural agents and the Department in the processing of applications for water use registrations.

7:20A-3.2 Procedures for obtaining an agricultural water use registration

(a) The Department will provide the current application form for agricultural water use registrations to all county agricultural agents.

(b) Any person who intends to divert less than 100,000 gallons of water per day for agricultural, aquacultural, or horticultural purposes, but who has the capability to divert 100,000 gallons of water per day or more, shall apply for a water use registration.

(c) An applicant for a water use registration shall contact the appropriate county agricultural agent to obtain an application form, a photocopy of the appropriate portion of a United States Geological Survey Quadrangle Map or county road map, and other instructions needed to file a complete application.

(d) The applicant shall follow all the instructions to complete the application form, including the photocopy of the appropriate portion of the United States Geological Survey Quadrangle Map or county road map, and shall submit the completed application form and other required documents to the appropriate county agricultural agent.

1. The following items will be required as part of the application form:

- i. The name and address of the applicant;
- ii. A description of the location of each diversion source, and the name and pumping capacity for each diversion source, including, if the diversion source is a well, the State of New Jersey assigned well permit number;
- iii. The location of each diversion source on the photocopy of the appropriate portion of the United States Geological Survey Quadrangle or county road map;
- iv. The maximum quantity of water to be diverted from each source on a monthly basis;
- v. The total number of acres owned or operated for agricultural, aquacultural, or horticultural purposes, the number of acres actively being farmed, the U.S. Department of Agriculture soil mapping unit, the acreage planted in each crop, and the number of acres of each crop under irrigation; and

vi. A description of the method used to measure the amounts of water diverted from each diversion source.

(e) The appropriate county agricultural agent, shall determine if the applicant's water usage requirements are less than 100,000 gallons of water per day based upon the information submitted under (d) above, and shall:

1. If the applicant's water usage requirements are determined to be 100,000 gallons or more of water per day, direct the applicant to apply for a water usage certification pursuant to N.J.A.C. 7:20A-2.3; or

2. If the applicant's water usage requirements are determined to be less than 100,000 gallons of water per day, forward the application and the determination of water usage requirements to the Department.

(f) On receipt of an application under (e) above, the Department shall issue a water use registration to the applicant.

7:20A-3.3 Registration record

(a) There shall be maintained by the Department and the appropriate county agricultural agent a record of all water use registrations for agricultural, aquacultural, or horticultural purposes, consisting of copies of:

1. The application documents;
2. Determination of water usage requirements by the appropriate county agricultural agent;
3. The water use registration; and
4. All other relevant information.

(b) This record may be reviewed at the Department and the office of the appropriate county agricultural agent, and copies of it may be obtained upon payment of the fee for duplication.

SUBCHAPTER 4. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:20A-4.1 Authority and purpose

This subchapter governs the Department's assessment of civil administrative penalties under the Water Supply Management Act, N.J.S.A. 58:1A et seq., for the violation of any provision of the Act, this chapter, or of any order adopted or issued by the Department pursuant to this chapter. This subchapter also governs the procedure for assessment, settlement and payment of civil administrative penalties and for requesting an adjudicatory hearing on a notice of civil administrative penalty assessment or an administrative order.

7:20A-4.2 Procedures for assessment, settlement and payment of civil administrative penalties for violations

(a) To assess a civil administrative penalty under this subchapter, the Department shall notify the violator by certified mail (return receipt

requested) or by personal service. This notice of civil administrative penalty assessment (NOCAPA) shall:

1. Identify the section of the statute, rule, administrative order, or water usage certification or certification condition violated;
2. Concisely state the alleged facts which constitute the violation;
3. Specify the amount of the civil administrative penalty to be imposed; and
4. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:20A-4.3.

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's final order in a contested case, or when a notice of civil administrative penalty assessment becomes a final order, as follows:

1. If no hearing is requested pursuant to N.J.A.C. 7:20A-4.3, a notice of civil administrative penalty assessment becomes a final order and is deemed received on the 21st day following receipt of the notice of civil administrative penalty assessment by the violator;
2. If the Department denies the hearing request pursuant to N.J.A.C. 7:20A-4.3(b), a notice of civil administrative penalty assessment becomes a final order and is deemed received on the 21st day following receipt of the notice of civil administrative penalty assessment by the violator;
3. If the Department denies the hearing request pursuant to N.J.A.C. 7:20 A-4.3(c), a notice of civil administrative penalty assessment becomes a final order upon receipt of notice of such denial; or
4. If the Department grants the hearing request, a notice of civil administrative penalty assessment becomes a final order upon receipt by the violator of a final order in a contested case.

(c) The Department may settle any civil administrative penalty assessed pursuant to N.J.A.C. 7:20A-4.4 according to the following factors:

1. Mitigating or extenuating circumstances not previously considered in the notice of civil administrative penalty assessment pursuant to N.J.A.C. 7:20A-4.4(d)7;
2. The timely implementation by the violator of measures leading to compliance not previously considered in the assessment of penalties pursuant to N.J.A.C. 7:20A-4.4(d)5; and/or
3. Any other terms or conditions acceptable to the Department.

7:20A-4.3 Procedures to request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment; procedures for conducting adjudicatory hearings

(a) To request an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment issued pursuant this subchapter, the violator shall submit the following information

in writing to the Department at Office of Legal Affairs, ATTENTION:
Adjudicatory Hearing Requests, Department of Environmental Protection, P.O.
Box 402, Trenton, New Jersey 08625-0402:

1. The name, address, and telephone number of the violator and its authorized representative;
 2. The violator's defenses to each of the findings of fact stated in short and plain terms;
 3. An admission or denial of each of the findings of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;
 4. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;
 5. An estimate of the time required for the hearing (in days and/or hours); and
 6. A request, if necessary, for a barrier-free hearing location for physically disabled persons.
- (b) If the Department does not receive the written request for a hearing within 20 days after receipt by the violator of the notice of a civil administrative penalty assessment and/or an administrative order being contested, the Department shall deny the hearing request.
- (c) If the violator fails to include all the information required by (a) above, the Department may deny the hearing request.
- (d) All adjudicatory hearings held pursuant to this section shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7:20A-4.4 Civil administrative penalty determination

- (a) The Department may assess a civil administrative penalty under this subsection against each violator who refuses, inhibits or prohibits immediate lawful entry and inspection of any premises, building or place by any authorized Department representative. Each day, from the initial day on which the violator refuses, inhibits or prohibits immediate lawful entry and inspection by any authorized Department representative up to and including the day on which the Department receives written notification from the violator that the violator will not refuse, inhibit or prohibit immediate lawful entry and inspection, shall constitute an additional, separate and distinct violation. The Department shall assess the penalty in accordance with (a)1 or 2 below, as applicable, except as adjusted pursuant to (d) below:

1. For refusing, inhibiting or prohibiting immediate lawful entry and inspection of any premises, building or place for which an administrative order or water usage certification has been issued under this chapter, the civil administrative penalty shall be in an amount up to \$5,000; or

2. For any other refusal, inhibition or prohibition of immediate lawful entry and inspection, the civil administrative penalty shall be in an amount up to \$800.

(b) The Department may assess a civil administrative penalty under this subsection against each violator who submits inaccurate information or who makes a false statement, representation or certification in any application, record or other document required to be submitted or maintained, or who fails to submit or maintain any application, record, or other document required to be submitted or maintained, or who falsifies, tampers with or renders inaccurate any monitoring device or method required to be maintained under this chapter or any order adopted or issued by the Department pursuant to this chapter. Each day, from the day on which the violator submits the inaccurate information or false statement, representation or certification to the Department up to and including the day on which the Department receives a written correction of the inaccurate information or false statement, representation or certification, shall constitute an additional, separate and distinct violation. The Department shall assess the penalty at the midpoint of the range at (b)1 through 3 below, as applicable, except as adjusted pursuant to (d) below:

1. For any intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty shall be in an amount of not more than \$3,000 nor less than \$1,000;

2. For any unintentional but foreseeable act or omission, the civil administrative penalty shall be in amount not more than \$1,500 nor less than \$500; or

3. For any other violation, the civil administrative penalty shall be in an amount not more than \$1,000.

(c) For each violation of the Act, this chapter, water usage certification, certification condition, or order adopted or issued under this chapter, other than a violation described at (a) or (b) above, the Department may assess a civil administrative penalty under this subsection. The Department shall consider each violation of each provision of this chapter a separate and distinct violation. If the violation is of a continuing nature, each day during which a violation continues shall constitute an additional, separate and distinct violation. The Department shall assess the penalty at the midpoint of the range at (c)1 through 3 below, as applicable, except as adjusted pursuant to (d) below:

1. For the first violation of a provision, not more than \$1,000;

2. For the second violation of the same provision, not less than \$1000 nor more than \$2,500; and

3. For the third and subsequent violations of the same provision, not less than \$2500 nor more than \$5,000.

(d) The Department may adjust the amount determined pursuant to (a), (b), or (c) above to assess a civil administrative penalty in an amount no

greater than the maximum amount nor less than the minimum amount in the ranges described in (a), (b), or (c) above, on the basis of any or a combination of the factors listed in (d)1 through 7 below. No such factor constitutes a defense to any violation:

1. The compliance history of the violator;
2. The number, frequency and severity of the violations;
3. The measures taken by the violator to mitigate the effects of the subject violation or to prevent future violations;
4. The deterrent effect of the penalty;
5. The cooperation of the violator in correcting the violation, remedying any environmental damage caused by the violation and ensuring that the violation does not recur;
6. Any unusual or extraordinary costs directly or indirectly imposed on the public by the violation; and/or
7. Any other extenuating, mitigating or aggravating circumstances.